Lord Wright, "The estoppel could not arise in this case. This ground is enough to distinguish the present case from any other case in which an estoppel has been found."

No other authority has been cited in support of the proposition that a judgment by default cannot raise an estoppel *per rem judicatam*. My own researches in this direction have been unproductive, and I am compelled to conclude that, within the limits laid down by Lord Maugham and Lord Wright, a judgment by default is as good as any other to raise an estoppel. For an Indian decision that an *ex parte* decree operates as *res judicata* in a suit for rent, see *Shib Chandra Talukdar* v. *Lakhi Priya Guha* [10]. It is therefore not open now to the defendant to say that a judgment *ex facie* for rent was in truth a judgment for interest. I accordingly hold that the plea of estoppel is good. Costs in the cause.

Order accordingly.

Solicitors: *T. K. Sen & Co.; Lovelace & Hastings.*

UDAYAR ALAGAN & ORS. v. PUBLIC PROSECUTOR

[C.A. (Thomson C.J., Good J.A., Azmi J.) October 23, 1961]

[Ipoh — F.M. Criminal Appeal No. 29 of 1961]

Criminal Law and Procedure — Murder — Penal Code, s.302 — Case depending upon credibility — Statement from dock.

Although an accused person is within his legal rights when he elects to make a statement from the dock instead of giving evidence from the witness-box, in a case which must in the event depend on credibility, he takes this course at his own peril.

The appellants were charged with murder under section 302 of the Penal Code. There was evidence which made out that charge, if it was believed. There was evidence by the appellants to the contrary though two of them made statements from the dock instead of giving evidence from the witness-box. On appeal,

Held: the evidence and the substance of the defence were adequately put to the jury, and the jury had the benefit of listening to the witnesses themselves.

Case referred to:—

(1) *Shimmin's Case* 15 Cox C.C. 122, 124.

COURT OF APPEAL.

Jag-Jit Singh for the appellants.

B. T. H. Lee (Deputy Public Prosecutor) for the respondent.

Thomson C.J. (delivering oral judgment): These four appellants were convicted for murder in contravention of section 302 of the Penal Code.

The charge was that on 8th April this year in some labourers' lines near Batu Gajah they killed a man named Jeevanandam in circumstances which amounted to murder and that this was done when they were acting together and in furtherance of a common intention which involved the deliberate killing of the deceased.

There was evidence which made out that charge, if it was believed. There was evidence by the appellants to the contrary, though here it must be observed that two of them took the dangerous course of making a statement from the dock instead of going into the witness-box and giving evidence. An accused person is, of course, entirely within his legal rights when he elects to take that course, but in a case which must in the event depend on credibility he takes it at his own peril. The rule was stated in *Shimmin's* case [1] in 1882 by Mr. Justice Cave in a passage which, so far as I am aware (and I am quite prepared to be told I am wrong), has never been criticised:—

> "A prisoner, though defended by counsel, may, if he chooses, himself make his statement to the jury. He ought to be heard in his defence, and have the opportunity of making his explanation of the circumstances proved against him. True, his statement was not made on oath, and that he was not liable to be cross-examined by the prosecuting counsel, and what he said was therefore not entitled to the same weight as sworn testimony."

In any event, to return to the instant case, in our view there was evidence, if it was believed, which made out the guilt of all four appellants. That evidence was accurately put to the jury and the defence was also adequately put to them by the learned trial Judge in a long and careful summing-up with which we can find no fault and the criticism of which amounts to no more than that it was not as favourable to the appellants as counsel would have liked it to have been.

The direction as to burden of proof has been criticised. Of course there are individual sentences in that direction which are open to criticism but the direction as a whole in our view was adequate and well supported by authority.

Again, it is true that every detail of the case for the defence, that every word said in evidence was not put to the jury. That is also true. In our view, however, the substance of the defence was adequately put to the jury and in any event they had the benefit of listening to the witnesses themselves.

In all the circumstances of the case we feel compelled to dismiss the appeal.

Appeal dismissed.

Re NG KANG LIM

[R. Cr. J. (Rose C.J.) October 25, 1961]

[Singapore — Criminal Revision No. 11 of 1961]

Criminal Procedure — Mandatory Order — Powers of revision of High Court under the Criminal Procedure Code (Cap. 132), s.311 — Delay in petitioning — Abuse of process of Court.

Although a mandatory order is one which is eminently appealable and for which revision is the remedy which should normally be sought, a petition for revision will not be entertained when it is made following a delay of more than nine months as this amounts almost to an abuse of the process of the Court.